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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,918	02/07/2002	Bernard Dautrepe	01107	3288

23338 7590 05/04/2004

DENNISON, SCHULTZ, DOUGHERTY & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,918

Applicant(s)

DAUTREPPE ET AL.

Examiner

Nathan J. Newhouse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003 and 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 23, 2003 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-22 are rejected as the preambles of these claims do not match the preamble of claim 1 from which these claims depend. Claim 1 is directed to the combination of the cover, champagne bottle, cork and wire.

In claim 3, line 2 "said cone" has no antecedent basis.

Claim 4 is rejected as the limitations of this claim have already been set forth in claim 1 from which this claim depends.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-5 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference (2,617,801) in view of the German reference (2,234,223) and Druesne et al. (US 5,103,989).

The French reference teaches a champagne bottle with a neck and glass ring. The bottle is closed by a cork (2) and a metal wire (3) holds the cork in the bottle by locking under the bottle ring. The French reference further teaches an over-capping cover (4) made of aluminum, but the cover has only one line of weakness. The French reference does not teach the cover having two parallel lines of weakness forming a tear strip therebetween, the tear tab having notches and the location of the lower line of weakness being a distance H from the top of the cover and the location of the upper line of weakness being a distance L that is at least 0.5H.

The German reference teaches an overcap with two parallel lines of weakness (upper 10, lower 11) to form a tear strip. The tear strip has notches adjacent the tear tab as shown in figures 1-2 and 4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the overcap of the French reference with two parallel lines of weakness as taught by the German reference to form a tear

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strip with a tear tab having notches to allow for quick easy removal of the portion of the overcap above the lower line of weakness.

Druesne et al. teaches a similar cap that has a pull strip defined by two lines of weakness wherein the space between the two lines is a distance L which is at least 0.5 the distance between the bottom line and the upper end of the bottle neck. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the pull strip of the French reference between the two lines of weakness such that there is a distance L there between as taught by Druesne et al. so that the pull strip is larger and located more towards the upper end of the bottle.

With respect to claims 5 and 19, the combination, as set forth, discloses the claimed invention except for the tab width (L_1) being $0.5L$ to L with L ranging from 1.5 to 4 cm or that the thickness of the material of the overcap is between $25\text{-}50\mu\text{m}$. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tab width (L_1) such that between $0.5L$ to L with L ranging between 1.5 and 4 cm. and to make the thickness of the overcap be between $25\text{-}50\mu\text{m}$, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments


6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan J. Newhouse
Primary Examiner
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